Clark v. *Bank* (1898) 32 App. Div. 316, 322; affirmed (1900) 164 N. Y. 498.

On principle it should not affect the result that this evidence was in form an abstract and not a copy. Abstracts of title, *Ward* v. *Garnons* (1810) 17 Ves. Jr. 134, and summaries of wills, *Sugden* v. *St. Leonards* (1876) L. R. 1 P. D. 154, 179, have been admitted. Wigmore on Evid. §§ 2105–2107. So also extracts from letters, *Walbridge* v. *Kilpatrick* (1876) 9 Hun 135; from lost or destroyed documents, *Sizer* v. *Burt* (1847) 4 Denio 426; and a solicitor's abstract from lost books of account. *Mayson* v. *Beazley* (1854) 27 Miss. 106. And see *Turner's Executors* v *Turner* (1903) 98 Md. 22. The opinion in the principal case takes the superficial position that this evidence is admissible because of the extreme age of the plaintiff's claim. While such circumstances may incline the court to unusual liberality, *Bean* v. *Tonnele* (1884) 94 N. Y. 381, 385, still it is submitted that, eliminating this factor, no other conclusion could have been logically reached.

INTERNATIONAL LAW AS PART OF THE LAW OF THE LAND.—The status of international law in municipal courts was lately recognized by the Court of King's Bench in the case of *West Rand C. G. M. Co.* v. *The King* [1905] 2 K. B. 391. The South African Republic had seized gold belonging to the plaintiff, for which by statute it should have made compensation. The plaintiff sought to recover from the British government on the theory that the latter succeeded to the rights and liabilities of the conquered republic. The court, per Lord ALVERSTONE, C. J., granting that international law was law, and that in a proper case its rules were enforceable in municipal courts on a parity with those of municipal law, held that the plaintiff's rights rested in the discretion of the political branch of the government, and were not cognizable in this instance by the court. It has long been recognized that many principles generally classed as part of international law are questions of political expediency and are cognizable in no municipal court. Such are questions of international boundaries, *Foster* v. *Neilson* (1829) 2 Pet. 253, 314, or rights of foreign warships, *Schooner Exchange* v. *M'Faddon* (1812) 7 Cr. 116. Whether such rules can be called law may be an open question. But with regard to the other branch of international law which is of a juridical nature, the question may now, in view of the principal case, be considered settled, despite the views of the analytic school of English jurisprudence. According to this school, international law is properly a branch, not of law, but of ethics, because, it is neither commanded, nor enforced, by an acknowledged superior. 1 Austin, Jurisprudence 3d ed., 187–9. The first objection seems to arise solely from the narrowness of Austin's definition of law, for it is submitted there is no essential difference between the originating causes of municipal and international law. The first is the sum of the customs obtaining between individuals, plus the statutes. Bryce, History and Jurisprudence, 683. The other is the sum of the customs obtaining between nations, plus declaratory treaties. *The Scotia* (1871) 14 Wall. 170. With regard to the second objection, it must be admitted that in

some cases the enforcement, of the court's decree on a principle of international law must necessarily depend on public opinion or the arms of the injured party. But to test the legal character of a rule by the effectiveness of its enforcement is to confuse the executive and judicial functions of government and to hold that if the executive is ineffective the judicial ipso facto ceases to exist. This test has never in fact been applied, for there are many rules, undoubtedly legal in nature, the means of whose enforcement has been inadequate. Cf. 2 COLUMBIA LAW REVIEW 511, 514. Such was the situation of all law in the Middle Ages, Westlake Internat. Law 8, and is to-day the case of suits against the sovereign, *U. S.* v. *Texas* (1891) 143 U. S. 621, questions of extradition, *Kentucky* v. *Dennison* (1860) 24 How. 66, and treaties, *Foster* v. *Neilson*, supra.

Theoretically, there would seem to be no objection to considering international law as really law, and in practice the courts of all civilized nations so consider it. Such is the view of the most eminent writers on the common law, Sir Frederick Pollock, 2 COLUMBIA LAW REVIEW 511, 1 Kent 2, of authorities on the civil law, 1 Savigny, System des Röm. Rechts § 11, 1 von Jhering, Zweck im Recht 223, and of writers on international law, 1 Rivier, Droit des Gens 18, (quoted, Wheaton § 13), Hall 14.

In the United States such is the unbroken current of decisions, from the opinions of Chief Justice MARSHALL in *The Charming Betsy* (1804) 2 Cr. 64 and *The Nereide* (1815) 9 Cr. 388, to the present day, *The Paquete Habana* (1899) 175 U. S. 677. In England such was the view of Lord Mansfield in *Triquet* v. *Bath* (1764) 3 Burr. 1478 and *Heathfield* v. *Chilton* (1767) 4 Burr. 2015, and of Lord Ellenborough in *Wolff* v. *Oxholm* (1817) 6 M. & S. 92.

These cases were accepted as the law in England, 4 Bl. Com. 67, until the case of *Regina* v. *Keyn* (1876) 2 Ex. Div. 63, when the Court of Criminal Appeal declined to enforce a rule of international law in the absence of an Act of Parliament adopting it. Although the effect of this decision was immediately nullified by statute, 41 and 42 Vict. c. 73, it has remained for the present decision to formally revert to the earlier doctrine and apparently to remove the last doubt as to the legal nature of international law. For an exhaustive discussion of the principles, see articles by Prof. James B. Scott in 4 COLUMBIA LAW REVIEW 409 and 5 ID. 124.

NOTICE OF THE RETENTION OF THE COPYRIGHT INCIDENT OF CONTROL OVER THE SALE.—On the question as to what will amount to sufficient notice in law of the intention of the owner of a copyright to retain control over the sale, was presented recently in a case before the circuit court for the southern district of New York. The complainant had printed this notice in one of its copyrighted books—"The price of this book at retail is one dollar net. No dealer is licensed to sell it at a less price and a sale at a less price will be treated as an infringement of the copyright." In a suit to restrain a dealer from selling at a reduced price, it was held that the notice was not sufficient to retain the copyright incident of control over the sale. *Bobbs-Merrill Co.* v. *Straus* (1905) 139 Fed. 155.